UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

New York Independent System Operator, Inc. Docket No. ER01-2967-000

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO MODIFICATIONS

(Issued October 26, 2001)

On August 29, 2001, New York Independent System Operator, Inc. (NYISO) filed with the Commission a proposed new Attachment S to its Open Access Transmission Tariff (OATT) to provide rules for the allocation of responsibility for the cost of interconnection facilities required for new generation projects and merchant transmission projects. In sum, the proposed rules allocate to developers 100 percent of the cost of facilities necessary to physically interconnect the project. In addition, developers are allocated the costs for transmission system upgrades that would not have been made "but for" the interconnection, minus the cost of any facilities that the NYISO's regional plan dictates would have been necessary anyway for load growth and reliability purposes. In this order, we accept the filing subject to modifications, as discussed below. The Commission's action benefits customers by providing certainty to the interconnection process and thereby facilitating the investment generation and interconnection facilities needed in the NYISO service area.

Background

NYISO states that it is making this filing in response to the order issued July 29, 1999,[1] in which the Commission found that NYISO's then proposed interconnection procedures were sufficient at that stage of NYISO's development, but also stated that NYISO and the market participants should work together to develop guidelines for cost responsibility with regard to new interconnections. NYISO further states that the proposed Attachment S is the result of extended efforts by NYISO and market participants to respond to this directive.

Notice and Interventions

[1] Central Hudson Gas & Electric Corporation, et al., 88 FERC ¶ 61,138 (1999).

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 48,051 (2001), with comments, protests, or interventions due on or before September 19, 2001. Timely motions to intervene were filed by entities listed in the Appendix to this order. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001), the filing of a timely motion to intervene that has not been opposed makes the movant a party to the proceeding. Given the lack of undue prejudice and the parties' interests, we also find good cause to grant pursuant to 18 C.F.R. 385.214(d) the unopposed, untimely motion to intervene filed by the Independent Power Producers of New York. On October 2, and October 5, 2001, NYISO and New York State Electric & Gas Corporation and Niagara Mohawk Power Corporation (together, the Companies), respectively, filed answers to the protests. Section 385.213(a)(2) of the regulations prohibits the filing of an answer to a protest, unless otherwise ordered by the decisional authority. Accordingly, the Commission rejects the answer filed by the Companies. However, the Commission accepts NYISO's answer since it assists the Commission in addressing the issues presented by NYISO's tariff filing in this case.

Consolidated Edison Company of New York, Inc., et al., the Companies, and Calpine Eastern and KeySpan-Ravenswood, Inc. (together, Project Developers) filed protests to NYISO's filing.[2] The protests are discussed below. Several parties filed comments in support of NYISO's proposal. Mirant Companies state that the proposed rules would help facilitate a common interconnection cost allocation standard across the Northeast since the rules adopt a cost allocation methodology for system upgrades consistent with that of PJM. In addition, they claim that the rules are an equitable solution to the allocation of costs between transmission owners and developers that is consistent with the best practices in the Northeast. They also support NYISO's request for waiver of the prior notice requirement to allow an effective date of September 26, 2001.

American National Power, Inc. (ANP) urges the Commission to accept the proposal because it will eliminate uncertainty regarding interconnection costs. However, ANP asks the Commission to make clear that the rules will not be subject to retroactive change as a result of this or any other subsequent change, since these rules may be superseded by new rules adopted by a Northeast RTO.

Discussion

We find that the proposed cost allocation rules, as modified, are reasonable and are consistent with or superior to the pro forma tariff. Therefore, we will accept them with the modifications discussed below.[3]

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[2]Although the Companies and Project Developers labeled their filings as "comments," they in fact protest various portions of NYISO's filing.

[3]As the Commission discussed at its October 11, 2001, meeting, the Commission is examining its interconnection policies. NYISO's cost allocation procedures would be subject to any prospective

(continued...)

Procedural Issues

We are not persuaded by the arguments of the Companies that we should reject the filing on procedural grounds. The Companies allege that the filing is defective and state that the proposal is merely a conceptual document. Moreover, the Companies assert that NYISO violated the terms of the Agreement Between NYISO and the Transmission Owners (ISO-TO Agreement) by filing the rules without first getting the Management Committee's approval. Thus, NYISO did not have the authority to make the filing. Furthermore, the Companies state, the filing neither improves existing market efficiency nor furthers the Commission's goal of advancing interregional coordination. The Companies allege that as proposed, the rules will have a temporary effect at best and have only superficial similarities with PJM's interconnection process and no similarity with the process used in New England

The Companies request that the Commission reject the filing without prejudice and either: (a) direct NYISO to cooperate with other ISOs to develop a regional interconnection cost allocation process as a part of the northeast RTO formation;
or (b) return the filing to the NYISO for further development.

We are satisfied based on our review and the NYISO's answer that while the tariff language as filed was not specifically considered at the June 6, 2001 meeting of the Management Committee, it closely tracks the cost rules that were approved at that meeting. Indeed, the changes approved at the June 6 meeting were reflected in the filed Attachment S to the OATT. Moreover, the rules are the result of a Commission directive and we conclude that until a northeast RTO is formed, the rules are necessary for the continued development of the NYISO market.

Facilities Studies

Section IV(F) of the proposed rules contains the procedures for assigning responsibility for System Upgrade Facilities. The proposed rules allocate to developers 100 percent of the cost of facilities necessary to physically interconnect the project. In addition, developers are allocated the costs for transmission system upgrades that would not have been made "but for" the interconnection, minus the cost of any facilities that the NYISO's assessment indicates should have been built anyway because they are necessary for load growth and reliability purposes.

Under the rules, the cost of System Upgrade Facilities is first allocated between all developers and all transmission owners, and then the developers' share of the cost is allocated among the developers. The necessary facilities are determined first by an Annual Transmission Baseline Assessment (Baseline Assessment) which is "...conducted by the Transmission Owners and NYISO

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[3](...continued)
changes in Commission regulations that result from this review.

Staff" to identify the System Upgrade Facilities that each transmission owner will need in the next five years to reliably meet its needs for load growth in its transmission district. Next, an Annual Transmission Reliability Assessment (Reliability Assessment) is performed "...by NYISO staff, in cooperation with affected Market Participants..." to determine the System Upgrade Facilities that will be required to interconnect the current year's class of proposed projects.[4] Project developers are allocated the costs to the extent that the cost of System Upgrade Facilities under the Reliability Assessment are greater than the cost of System Upgrade Facilities under the Baseline Assessment. Transmission owners are responsible for upgrades included in the Reliability Assessment up to the cost of upgrades that were included in the Baseline Assessment. Costs not assigned to transmission owners are then allocated among the project developers, by class year.

Project Developers argue that under these rules, transmission owners are able to control the allocation of System Upgrade Facility costs. They state that this role should be performed by NYISO independently, with input from transmission owners and other market participants. Project Developers assert that the absence of specifics dictating the NYISO's staff's role (other than to perform certain thermal, voltage, and stability tests) implies that other tasks and all decision-making in connection with the Baseline Assessment are allocated to transmission owners. Project Developers assert that the Baseline Assessment must be independent of the transmission owners' undue influence. Furthermore, the Reliability Assessment is also subject to undue influence since it too is conducted "...in cooperation with affected Market Participants," such as transmission owners.

We agree with Project Developers that under the proposed rules, the transmission owners' role is improperly elevated, contrary to Commission policy. In ISO New England, Inc.,[5] we directed ISO New England to eliminate any decisional role transmission owners might have had in the transmission planning studies since we were concerned that such a role could give them an incentive and ability to bias studies in their favor. In the rehearing order (95 FERC at 62,430), we stated:

> [W]e deny clarification of our determination that transmission owners should not have a decisional role in transmission planning. Under ISO-NE's proposed transmission planning process, ISO-NE and the transmission owners would have jointly developed and later expanded a regional transmission plan, and determined which upgrades would qualify as reliability upgrades and receive pool support. In the June 28 Order we stated that under this proposed structure, transmission owners would have both the ability and the incentive to bias ISO-NE's transmission planning process in favor of their competitive interests. Thus, we found ISO-NE's planning process by its own terms to

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[4]Both the Baseline Assessment and Reliability Assessment "...will be reviewed and approved by the Operating Committee...." See sections IV(F)(1) and IV(F)(5), respectively.

[5]ISO New England, Inc. 91 FERC ¶ 61,311 (2000), order on reh'g, 95 FERC ¶ 61,384 (2001) (ISO New England, Inc.).

> be not just and reasonable, and we directed ISO-NE to eliminate the transmission owners' control over the planning process, as is the case in PJM. (Footnote omitted.)

As we also noted in the rehearing order, we believe that a single entity should have the responsibility fo transmission planning and expansion within a region. Accordingly, we direct the NYISO to file, within 30 days of the date of this order, to amend its proposal to eliminate any decision-making role of the transmission owners.

Regional Planning

Section (F)(1)(a) of the proposed rules provides that the Baseline Assessment will identify the System Upgrade Facilities needed year-by-year for the transmission system to reliably serve projected load in each transmission owner's transmission district for a five-year period. Project Developers asser that such a localized orientation is inconsistent with the NYISO's responsibility for the entire control area and with a regional approach to transmission planning, as adopted by PJM. Project Developers assert that the problem with such a localized approach is that since some transmission owners are experiencing little if any load growth, they will have little or no system upgrades in their Baseline Assessments, and the burden will then fall on developers to fund all system upgrades, notwithstanding regional needs. They contend that the rules should be revised to adopt a regional approach to planning which should be performed by the NYISO.

We share the Project Developers' concerns because, by definition, the Base Assessment is limited to a transmission owner's transmission district. Accordingly, as part of the compliance filing required above, we direct NYISO to change the definition of the Baseline Assessment in section I(B) to eliminate the limitation of the study to a transmission owner's transmission district. In addition, we direct NYISO to ensure that its procedures for the Baseline Assessment require an assessment of the necessary System Upgrade Facilities on an ISO-wide basis rather than based on individual transmissior owner districts.

Allocation of Costs to Developers

NYISO states that the purpose of the rules is to allocate to each developer responsibility for the cost of the net impact of the interconnection of its project on the reliability of the transmission system. This results in a cost to developers for facilities that are required by, or caused by, its project, i.e., the facilities that would not be needed "but for" its project. Sections IV(F)(4)(b) and (c) provide that the net System Upgrade Facilities cost of a developer's project are determined by comparing the results of the Baseline Assessment with the Reliability Assessment. The net System Upgrade Facilities costs tha the developer is responsible for equal the cost of the System Upgrade Facilities not contained in the Baseline Assessment minus any costs eliminated or reduced in that assessment due to the construction of system upgrades associated with the proposed project.

Project Developers are concerned that the rules might be read to require them to pay for upgrades if their required upgrades are not specifically identified in the Baseline Assessment based on language that states:

> Developers are responsible for 100% of the cost of the minimum amount of System Upgrade Facilities, not already identified in the Annual Transmission Baseline Assessment that are needed...to reliably interconnect....

Project Developers assert that the rules should provide that cost responsibility is determined by subtracting the aggregate cost of all upgrades required under the Baseline Assessment from the aggregate cost of all upgrades required to interconnect all proposed projects to determine developers' costs.

We find it reasonable that the purpose of the cost allocation rules is to assign costs of System Upgrade Facilities to developers only to the extent that these costs are not already in the Baseline Assessment. If the Reliability Assessment indicates that a developer's upgrades could replace upgrades in the Baseline Assessment, then the rules, under the provisions requiring least cost configuration (section IV (F)(7)), would dictate that even if the facilities were not identical, developers would not be obligated to pay for them. These determinations would necessarily be made on a case by case basis. Therefore, we will accept the provision as drafted.

Project Developers also question the lack of specifics regarding the allocation of upgrade costs among developers. Section IV(F)(5)(d) provides that costs will be allocated among the developers based upon the pro rata contribution of each project to each of the individual System Upgrade Facilities. Project Developers state that while the analytical methods identified to determine the pro rata contribution appear to involve common engineering techniques, the mechanism for assessing the pro rata share for each developer is not spelled out. Project Developers assert that this should be codified in the rules.

We agree. Accordingly, we direct the NYISO to clarify this point in the proposed rules.

Lastly, Project Developers request that the rules allow developers a right of appeal to the NYISO, in addition to the Commission, concerning the cost estimates. We note that the proposed rules are part of NYISO's OATT and that section 12.0 of the NYISO OATT has a provision governing disputes. Therefore, no revision is necessary since an appeal provision for cost allocations would be redundant.

Material Impact Standard

Once costs are allocated between developers and transmission owners, developers' costs are allocated among the individual developers, if necessary. Section IV(F)(5)(e) of the proposed rules states that:

> [N]o developer is responsible for any of the cost of any individual System Upgrade Facility if his project does not have a Material Impact[6] on the reliability of the transmission system, that is, if the project does not make a material contribution to the need for that System Upgrade.

If no developer's project reaches the Material Impact standard, but the cumulative effect of a group of new developments requires transmission facilities improvements, the material impact cutoffs are replaced with de minimis cutoffs.[7]

NYISO states that the Material Impact concept, and the specific thresholds, were adopted after extensive discussions and designed to avoid the situation where, absent any thresholds, a developer could be charged for a measurable but immaterial contribution of its project to the need for an upgrade.

Consolidated Edison Company of New York, Inc., Long Island Power Authority and LIPA, and Orange and Rockland Utilities, Inc. (collectively, NY Protesters) allege that the NYISO's proposal to establish a Material Impact standard would result in an inequitable allocation of costs among generators. NY Protesters assert that the two percent threshold is totally arbitrary and could inequitably assign costs to a single generator since other generators, whose collective contribution to th fault duty is higher than that of the single generator, avoid any cost responsibility.

Project Developers claim that it is unreasonable to allocate the costs for system upgrades attributable to certain developers that are below the de minimis level to another developer. Project Developers also state that this materiality standard could lead to a single developer being the sole responsible party among a group of developers when most parties' individual contributions do not reac the materiality level and a single developer is above this material standard. Project Developers argue

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[6]The Material Impact Standard is defined as any one of the following: (1) Short Circuit contribution equal to or greater than 2 percent of the existing rating of the equipment; (2) thermal loading equal to or greater than a 5 percent distribution factor; (3) voltage effects equal to or greater than 5 percent of the voltage drop occurring with all class year projects; and (4) stability effects equal to or greater than 2 percent of the fault current for the most critical stability test that is causing the nee for the System Upgrade Facility.

[7]The de minimis standards are defined as 100 amperes short circuit or stability fault contributio or 10 MW thermal contribution, or 2 percent of the voltage change at the most critical bus.

that costs that are de minimis and below a certain standard should be rolled into system cost averages, not be borne by other developers.

In its answer, NYISO asserts that it and the vast majority of Market Participants believe that the material impact standards are a technically sound and equitable method of assigning costs. NYISO points out that the two percent threshold is but one of the factors considered and that taking together all projects being assessed at a given time, all the electrical conditions being measured, and all the new System Upgrade Facilities required for the projects as a group, some may make a material contribution and some will not.

We find that NY Protesters and Project Developers raise valid concerns regarding the effects of implementing the Material Impact standard. While not allocating costs to a specific project that has "measurable but immaterial" impact is reasonable, we are concerned that the standards as drafted could lead to an inequitable cost shift based on the example provided by NY Protesters.[8] Accordingly, we direct NYISO to revise the rules and delete the Material Impact standards without prejudice to refiling with additional support.

NYISO Authority

The Companies assert that the filing implies incorrectly that the transmission owners are required by the rules to build whatever facilities are identified by NYISO in the Baseline Assessment. At present, this is the responsibility of the transmission owners. The Companies state that centralized transmission expansion and planning and expansion cost recovery are important aspects of the ongoing Northeast RTO negotiations and should be addressed in that process. Furthermore, the transmission owners did not assign to the ISO the authority to direct transmission system modifications or expansion under the ISO-TO Agreement.

In its answer, NYISO responds to the Companies and explains that Appendix One of Attachment S delineates the conditions that must be satisfied before a transmission owner is obligated to construct System Upgrade Facilities. While we will direct that Appendix One be modified as discussed below, we find that the obligation to build with the conditions noted by NYISO, is reasonable and in accord with other ISOs and with the obligation of a transmission owner to construct upgrades.[9]

Appendix One of the proposed rules sets forth the conditions under which the transmission owner will construct System Upgrade Facilities. The rules provide that the transmission owners must be assured of recovery: (1) of all reasonably incurred costs, including a risk-adjusted amortization period; (2) of a return on its investment reflecting the risk of the investment in a restructured electricity

[8] See NY Protesters' protest at attachment Table 1.

[9] See Obligation To Build section of PJM Operating Manual, Schedule 6, Section 1.7.

market; (3) without delay once the facilities are completed; (4) of all operations and maintenance costs; and (5) for costs for projects which are not completed.

Project Developers oppose these conditions and cite the Commission's observations regarding similar conditions proposed by NYISO in its RTO filing in Docket No. RT01-95-000. There, the Commission stated:

> [T]hese principles appear to condition transmission expansion upon the satisfaction of transmission owners with, among other things, an agreeable return on investment. These cost recovery principles seem to give the transmission owner the ultimate decision-making ability to carry out transmission upgrades.[10]

Project Developers state that the conditions should be revised or eliminated.

While transmission owners should be assured of cost recovery, we find the conditions too extensive. Accordingly, we direct NYISO, in its compliance filing, to amend the rules to be consistent with PJM's rules in this regard, which allow for the right to recover "...all reasonably incurred costs, plu a reasonable return on investment."

Cost Estimates

Section IV(F)(11) caps a developer's cost once the developer has accepted the NYISO's final cost figure and posted adequate financial security for that amount. If the actual cost of constructing the System Upgrade Facilities is less than the agreed amount, the developer pays only the actual costs. If the actual costs exceed the NYISO's estimates, however, the developer is responsible for costs increases, but only where those increases "...are not within the control of the Connecting Transmission Owner...." [11] As noted in the proposed rules, examples of costs that are "within the control" of the Transmission Owner are additional construction man-hours due to Connecting Transmission Owner management or correcting equipment scope deficiencies due to Connecting Transmission Owner oversights. The rules also provide that disputes between the developer and the Connecting Transmission Owner will be resolved based on the terms and conditions in the interconnection agreement (IA).

The Companies assert that this provision should be rejected as an express violation of section 212(a) of the FPA, which provides that a utility may recover "...all the costs incurred...and the costs of any enlargement of transmission facilities." The Companies state that even if the Commission were not precluded from adopting this proposal by the express provisions of section 212, it would be required to

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[10] New York Independent System Operator, Inc., et al., 96 FERC ¶ 61,059 at 61,203 (2001).

[11] See section IV(F)(11)(c).

reject this proposal as unreasonable and unworkable since the proposal would allow a developer to shift costs to others. Lastly, the Companies state that this provision will lead to widespread and unnecessary litigation over the extent to which cost increases were not within the control of a particular transmission owner. The Companies state that to the extent the cost estimates are provided by the NYISO rather than the Connecting Transmission Owner, transmission owners are likely to claim in virtually every case that the cost overrun was the result of poor forecasting by the NYISO, which is clearly beyond the control of the transmission owner.

We agree with the Companies that NYISO has not shown that these provisions are reasonable and workable. First, however, we clarify that section 212(a) does not apply here. It applies to section 210 ordered interconnections and section 211 ordered transmission, not interconnection or transmission obtained under an OATT. The applicable standard for cost recovery here is the "just and reasonable" standard of sections 205 and 206 of the FPA.[12] In any event, NYISO's proposal is unclear as to how the binding cost estimate operates in conjunction with the obligation to build provisions described above, which seek to ensure that a transmission owner will recover its costs. NYISO should explain from whom prudently incurred costs in excess of the estimate are recovered, and why that is a reasonable result. Accordingly, we will accept the provisions subject to NYISO, within 30 days of the date of this order, providing the required explanation.

Cost Certainty

The Companies advocate that the proposal be modified to include a provision expressly waiving the right of either the transmission owners or developers to file complaints challenging any allocation of interconnection costs accepted and agreed to under the procedures, subject only to the public interest standard of section 206 of the FPA. This change would ensure that allocations of interconnection costs would remain binding on the parties during the life of the facilities, since these ru are likely to be superseded by new rules once a single RTO is established for the Northeast. Similarly, ANP asks the Commission to make clear in its order that the rules will not be subject to retroactive change as a result of this or any other subsequent change in interconnection cost allocation rules, since these rules may be superseded by new rules adopted in a proposed Northeast RTO.

We are not persuaded that a waiver provision is necessary despite the possible interim nature of the rules. As to ANP's request, the Commission will not now address the timing and effective date of any possible change in its interconnection policies as a result of the interconnection rulemaking the Commission is considering. Nor will the Commission here further address the merits of waiving the

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[12]While section 212(a) states that a utility may recover "...all costs...," the rates to recover these costs must also be just and reasonable, i.e., the costs must be prudently incurred. Thus, even if that section were applicable here, the same just and reasonable standard as that contained in FPA sections 205 and 206 would apply.

right to file a complaint concerning the allocation of interconnection costs. We envision that any chang in our interconnection policy would be prospective and that to the extent market participants justify some method of conversion, this issue should be addressed in the NOPR.

Interconnection Agreements

Section IV(G)(1) states that the IA between the developer and the connecting Transmission Owner will reflect the developer's cost responsibility. Project Developers contend that IAs should be executed only by the NYISO.

We are not persuaded by the Project Developers' argument at this time. The proposed rules are a supplement to the existing interconnection procedures previously accepted by the Commission and at present, IAs are executed between the interconnecting party and the transmission owner. Accordingly, no change is warranted.

Transmission Credits

Section IV(I) states that:

> [N]othing in the rules precludes any transmission service customer from receiving transmission service charge credits consistent with FERC policy and precedent.

The Commission's policy regarding credits for network upgrades associated with the interconnection of a generator has been that all network upgrade costs are credited back to the customer that funded the upgrades once the delivery service begins.

Project Developers state that the rules on credits should be revised to: (1) account for the time value of money and (2) provide that credits may be offset against a developer's or its purchaser's cost of transmission service (including point-to-point service, network service, or purchase of transmission congestion contracts in a NYISO auction).

While the rules do not provide any specifics on how credits will be applied, we find that the section as written provides for transmission credits consistent with Commission policy and precedent and will be applied once a transmission customer claims a credit. On the issue of accounting for the

time value of money related to transmission service credits, we note that in AEP,[13] the Commission denied rehearing of Duke Energy North America's claim that a generator should be entitled to interest on credits to compensate for alleged loss of time value of money paid to AEP. In AEP, the Commission reasoned that since AEP did not hold the payments for any significant length of time, no interest was necessary. However in an order on rehearing issued contemporaneously in a different AEP proceeding (Docket No. ER01-2163-001), the Commission is changing its policy concerning interest on transmission credits.[14] NYISO's proposed transmission credit provisions need not be modified since they are drafted to accommodate changes in Commission policy on this issue.

Headroom

Section IV(F)(12) outlines the repayment provisions of the rules when a developer pays for any System Upgrade Facilities that create electrical capacity in excess of the electrical capacity actually used by a subsequent project (Headroom). A developer will be repaid the depreciated cost of the Headroom by the developer of any subsequent project that uses Headroom within ten years.

Project Developers state that payment in depreciated dollars penalizes developers and request that the rule be changed to provide repayment in constant dollars. However, Project Developers state that assuring interest on transmission credits could relieve this concern. Since the Commission is granting interest on these credits, as discussed above, the Commission considers this Headroom issue to be resolved.

Developer's Obligation Following the First Round

Section IV(F)(8) provides that following approval by the Operating Committee of the Reliability Assessment, a developer must accept its share of the System Upgrade Costs within 45 days or drop out. If a developer accepts its initial cost allocation, it must post security in the full amount of allocated costs. If a developer chooses to drop out, no security is required, and there is a recalculation of the overall costs and a reallocation of costs to the remaining developers. The remaining developers then have 30 days to decide whether to accept the revised costs or drop out. If a developer chooses

[13] American Electric Power Service Corporation, 94 FERC ¶ 61,166 (2001) (AEP).

[14] This is a matter we intend to explore as part of a generic proceeding on interconnection pricing that we intend to initiate in the near future. In the interim, though, until that proceeding reaches final conclusion, we find that the transmission credits should include interest on the monies paid. See American Electric Power Service Corporation, 97 FERC ¶ ____ at ____, slip op. at 3-4 (2001).

not to accept the reallocated costs, its security is "subject to forfeiture."[15] Section IV(F)(12) allows developers to recover forfeited security amounts only to the extent the security amounts have paid for Headroom.

Project Developers contend that this arrangement is inequitable, since a developer could commit funds under circumstances that later change. This occurs when a developer is asked to commit funds once it accepts the revised allocation of costs and posts a security under the assumption that the costs will be shared with another developer(s) who has actually decided to drop out based on the second allocation.

We share Project Developers' concerns that a developer may be exposed to an unreasonable risk to forfeiting a security, if, during the second round, another developer chooses to drop out. In this scenario, a developer must proceed under circumstances it could not anticipate or forfeit its first round security. We believe that there should be some reasonable basis for what a developer's maximum exposure should be going forward. Accordingly, we will reject this provision without prejudice as unsupported and unreasonable since the risk is unlimited. We direct NYISO to either eliminate the provision or provide greater certainty.

Neighboring Control Areas

Project Developers are concerned that the proposed rules do not explain how NYISO will address interconnections that affect a neighboring control area. Developers acknowledge that this is one of the "seams" issues that have been under discussion among the system operators in the Northeast Developers nonetheless urge the Commission to direct the NYISO to address this issue in a compliance filing.

We decline to do so. Our consideration here involves the costs associated with interconnection to the NYISO. This is consistent with Duke Energy Corporation,[16] in which we explained that:

> ...as we have stated in relation to inadvertent or unauthorized loop flows, interconnected utilities must, and do, work closely together to ensure that the operation of one system does not jeopardize the reliability of a neighboring system. Further, we stated that it is for owners and operators of utility systems to establish mutually acceptable operating practices. In this case, we mean this to include system interconnections. (Footnote omitted.)

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[15] See section IV(F)(10)(b).

[16] 94 FERC ¶ 61,187 at 61,658 (2001).

Accordingly, we will not require amendments at this time. We also note that this issue will be addressed as part of a regional RTO plan.

Other Concerns

We direct NYISO to clarify its proposal in its compliance filing to address a number of other concerns that intervenors raise, as discussed below. These issues include: (1) whether or not the Baseline Assessment and Reliability Assessment include deliverability criteria [17]; (2) an inconsistency the definition of "New Interconnection;" (3) who determines when an Baseline Assessment deficiency has been resolved and how that determination was reached, thereby relieving a developer of System Upgrade Facilities costs [18]; and (4) who is responsible for providing cost estimates, i.e., the transmission owners, NYISO, or some other entity.

In addition, Companies claim that the proposal offers no direction to entities developing small generators, i.e., those with a MW rating below 10, since the rules only apply to interconnections of generators 10 MWs and above. We agree and direct NYISO to file, within six months of the date of this order, tariff provisions to address this issue.

Effective Date

NYISO requests waiver of the Commission's 60-day notice requirement and requests that the filing be made effective no later than September 26, 2001, citing the urgent need for new sources of power supply in New York State and the Northeast. We will grant the requested waiver for good cause shown and allow an effective date of September 26, 2001.

The Commission orders:

(A) NYISO's request for waiver of the Commission's 60-day prior notice requirement is granted.

(B) NYISO is directed to submit compliance filings, as discussed in the body of this order.

(C) NYISO's proposed Attachment S to its OATT is hereby accepted, to become effective September 26, 2001, as modified pursuant to ordering paragraph (B) above.

By the Commission. Commissioner Breathitt dissented in part with a separate statement attached.

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[17] See Project Developers' Comments at 18-19.

[18] See Companies' Comments at 7.

(S E A L)

David P. Boergers,
Secretary.

Appendix

Interventions and Protests
New York Independent System Operator, Inc.
Docket No. ER01-2967-000

AES NY, LLC & AES Eastern Energy, LP
American National Power, Inc.*
Athens Generating Company, L.P.
Calpine Eastern**
Central Hudson Gas & Electric Corporation
Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Long Island Power Authority and LIPA**
Dynegy Power Marketing
HQ Energy Srvices (US) Inc.
Independent Power Producers of New York+
KeySpan-Ravenswood, Inc.**
Mirant Companies*
New York State Electric & Gas Corporation and Niagara Mohawk Power Corporation*
NRG Northeast Generating, LLC.
Power Authority of the State of New York

Rochester Gas and Electric Corporation
Southern Company Services, Inc.

* comments
** protest
+ late

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc. Docket No. ER01-2967-000

Breathitt, Commissioner, dissenting in part:

(Issued October 26, 2001)

In an order issued on October 25, 2001, in American Electric Power Service Corporation, Docket No. ER01-2163-001, I issued a dissent on the Commission's new policy to require interest on transmission credits. In this case, the NYISO's proposed transmission credits need not be modified to reflect this new policy since the Interconnection Agreements at issue provide for transmission credits "consistent with FERC policy and precedent." However, the issue of repayment for Headroom is resolved in this case by the grant of interest on transmission credits. For the reasons I articulated in AEP, I dissent on this aspect of today's order, and instead would have found the Headroom repayment provision consistent with the Commission's policy of not requiring interest on transmission upgrades.

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Linda K. Breathitt
Commissioner